

[6/23/05 11:18 am] This morning's Supreme Court decision in State v. Cummings creates a new rule of law. The Justices held that the burden of proof on the State in a prosecution for refusal to submit to a breath test is proof beyond a reasonable doubt, as opposed to the statutory burden of a preponderance of the evidence under N.J.S.A. 39:4-50a(a). The Court based its ruling upon a recognition of the increasingly serious penalties associated with the refusal charge. The Justices also recognized the propriety of this increased burden of proof as a natural extension of the Court's analysis of the refusal statute in State v. Widmaier, 157 N.J. 475 (1999). In that case, the Court ruled that double jeopardy protections apply to the refusal charge.

In assessing whether to apply this morning's ruling and new rule of law retroactively, the Justices adopted the so-called "pipeline retroactivity" option. This means that the retroactivity component of the decision only applies those cases that are in the "pipeline" today; i.e. the case under review, cases currently on appeal and all future cases.